

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HAMPDEN, SS.

CIVIL ACTION NO. 05-30046-KPN

ALICE W. HALPIN,

Plaintiff

v.

RDC OF CONNECTICUT, INC.,
R.D. CLARK AND SONS, INC.,
KATELAND LEASING, INC.,
PINNACLE TRANSPORTATION, INC.
and CHINA GROVE TRANSPORT,
INC.

Defendants

**PLAINTIFF/DEFENDANT-IN-
COUNTERCLAIM'S ANSWER AND
AFFIRMATIVE DEFENSES**

COUNT I
(Breach of Contract)

1. The Defendant-in-Counterclaim admits the allegations contained in paragraph 1 of the Counterclaim.
2. The Defendant-in-Counterclaim admits the allegations contained in paragraph 2 of the Counterclaim.
3. The Defendant-in-Counterclaim admits the allegations contained in paragraph 3 of the Counterclaim.
4. The Defendant-in-Counterclaim admits entering into a Stock Purchase Agreement as alleged but denies that Kateland was engaged in the business of transporting petroleum products. Kateland operated as a leasing company.
5. The Defendant-in-Counterclaim admits the allegations contained in paragraph 5 of the Counterclaim.
6. The Defendant-in-Counterclaim admits the allegations contained in paragraph 6 of the Counterclaim.
7. The Defendant-in-Counterclaim denies that \$2,875,000.00 was paid in cash at the closing, but admits the remaining allegations contained in paragraph 7 of the Counterclaim.

8. The Defendant-in-Counterclaim denies that \$60,000.00 was paid in or about February 2004. Said payments were made over a period of time by virtue of a written agreement to pay for personal expenses of the Defendant-in-Counterclaim or her agents up to the amount of \$60,000.00. This compensation was made incrementally between February 2004 and November 2004. The Defendant-in-Counterclaim denies that RDC made these payments without obligation to do so.
9. The Defendant-in-Counterclaim admits that the language as set forth in paragraph 9 is accurate but denies that it provides all pertinent parts. The Defendant-in-Counterclaim affirmatively states that the Note provides that "there shall be no right of offset with regard to any matters covered by a certain Escrow Agreement of even date providing for sums to be paid with regard to vehicle repairs as set forth herein."
10. The Defendant-in-Counterclaim admits the allegations contained in paragraph 10 of the Counterclaim.
11. The Defendant-in-Counterclaim denies the allegations contained in paragraph 11 of the Counterclaim.
12. The Defendant-in-Counterclaim admits the allegations contained in paragraph 12 of the Counterclaim.
13. The Defendant-in-Counterclaim denies the allegations contained in paragraph 13 of the Counterclaim.
14. The Defendant-in-Counterclaim denies the allegations contained in paragraph 14 of the Counterclaim.
15. The Defendant-in-Counterclaim denies the allegations contained in paragraph 15 of the Counterclaim.
16. The Defendant-in-Counterclaim admits the allegations contained in paragraph 16 of the Counterclaim.
17. The Defendant-in-Counterclaim states that Section 14.8 of the Stock Purchase Agreement speaks for itself.
18. The Defendant-in-Counterclaim states that Section 14.13(c) of the Stock Purchase Agreement speaks for itself.
19. The Defendant-in-Counterclaim has insufficient information to either admit or deny the allegations contained in paragraph 19 of the Counterclaim.

20. The Defendant-in-Counterclaim admits that a fine was paid to the DOT but denies that payment was made in March of 2004. The Defendant-in-Counterclaim denies that RDC incurred maintenance bills in excess of \$187,000.00 to obtain DOT inspection approval.
21. The Defendant-in-Counterclaim has insufficient information to either admit or deny the allegations contained in paragraph 21 of the Counterclaim.
22. The Defendant-in-Counterclaim has insufficient information to either admit or deny the allegations contained in paragraph 22 of the Counterclaim.
23. The Defendant-in-Counterclaim has insufficient information to either admit or deny the allegations contained in paragraph 23 of the Counterclaim.
24. The Defendant-in-Counterclaim has insufficient information to either admit or deny the allegations contained in paragraph 24 of the Counterclaim.
25. The Defendant-in-Counterclaim denies the allegations contained in paragraph 25 of the Counterclaim.
26. The Defendant-in-Counterclaim denies the allegations contained in paragraph 26 of the Counterclaim.
27. The Defendant-in-Counterclaim states that Section 4.11 of the Stock Purchase Agreement speaks for itself, admits that Tartan Maintenance Management, Inc. was a purchaser of tires for re-sale and as a result denies the remaining allegations contained in paragraph 27 of the Counterclaim.
28. The Defendant-in-Counterclaim states that Section 9.1(a) of the Stock Purchase Agreement speaks for itself.
29. The Defendant-in-Counterclaim has insufficient information to either admit or deny the allegations contained in paragraph 29 of the Counterclaim.
30. The Defendant-in-Counterclaim has insufficient information to either admit or deny the allegations contained in paragraph 30 of the Counterclaim.
31. The Defendant-in-Counterclaim admits to receipt of payment of interest expense but denies that said payment was not due and owing.
32. The Defendant-in-Counterclaim has insufficient information to either admit or deny the allegations contained in paragraph 32 of the Counterclaim.

WHEREFORE, the Defendant-in-Counterclaim, Alice W. Halpin, demands that Judgment enter in favor of the Defendant-in-Counterclaim and award her costs in

defending this action, including attorney's fees as provided under the Stock Purchase Agreement, Note, Guaranties and Security Agreements.

COUNT II
(93A)

33. The Defendant-in-Counterclaim reasserts and realleges its answers to the allegations contained in paragraphs 1 through 32 of the Counterclaim.
34. The Defendant-in-Counterclaim denies the allegations contained in paragraph 34 of the Counterclaim.
35. The Defendant-in-Counterclaim denies the allegations contained in paragraph 35 of the Counterclaim.
36. The Defendant-in-Counterclaim denies the allegations contained in paragraph 36 of the Counterclaim.

WHEREFORE, the Defendant-in-Counterclaim, Alice W. Halpin, demands that Judgment enter in favor of the Defendant-in-Counterclaim and award her costs in defending this action, including attorney's fees as provided under the Stock Purchase Agreement, Note, Guaranties and Security Agreements.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Defendant's Counterclaim fails to state a claim for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Defendant's claims are barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff has acted at all times in good faith, reasonably and justifiably.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiff states that the Defendant is estopped from asserting a breach of contract claim.

FIFTH AFFIRMATIVE DEFENSE

The Plaintiff states that the Defendant's action is brought in violation of the applicable statute of frauds.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff states any amounts due to the Defendant are subject to offset.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiff states any damages sustained by the Defendant are the result of the action(s) of third parties, for which the Plaintiff is not legally responsible.

EIGHTH AFFIRMATIVE DEFENSE

The Plaintiff states that the Defendant's claims are barred due to the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

The Plaintiff reserves the right to add such other affirmative defenses that may become apparent as a result of further proceedings in this matter.

Respectfully submitted,
The Plaintiff,
Alice W. Halpin,
By Her Attorneys,

/s/Robert S. Murphy, Jr.
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April 4, 2005

CERTIFICATE OF SERVICE

I, Robert S. Murphy, Jr., hereby certify that on April 4, 2005, I caused a copy of the foregoing Plaintiff/Defendant-in-Counterclaim's Answer and Affirmative Defenses to be served upon all interested parties by mailing a copy thereof, postage prepaid, first class mail to: Michael E. MacDonald and Diane Degiacomo, Cane, Hibbard, Mayers & Cook, P.C., 66 West Street, Pittsfield, MA 01201

/s/Robert S. Murphy, Jr.
Robert S. Murphy, Jr.